

109TH CONGRESS
1ST SESSION

H. R. 4296

To amend title 11 of the United States Code with respect to avoidable preferences; and to amend title 28 of the United States Code with respect to venue for proceedings to avoid preferences under section 547 of title 11 of the United States Code.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 2005

Mr. SODREL (for himself, Mr. WESTMORELAND, Mr. TIAHRT, Mr. COLE of Oklahoma, Mr. FRANKS of Arizona, Mr. PENCE, Mr. ROHRABACHER, Mr. WILSON of South Carolina, Mr. SHADEGG, Mr. CULBERSON, Mr. JONES of North Carolina, Mr. COBLE, Mr. KUHLMANN of New York, Mr. McCAUL of Texas, Mr. BOUSTANY, Mr. MARCHANT, Ms. FOXX, Mr. GOHMERT, and Mr. HOSTETTLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code with respect to avoidable preferences; and to amend title 28 of the United States Code with respect to venue for proceedings to avoid preferences under section 547 of title 11 of the United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Innocent Supplier Fairness
5 Act”.

1 **SEC. 2. AMENDMENTS.**

2 (a) AMENDMENT TO TITLE 11 OF THE UNITED
3 STATES CODE.—Section 547 of title 11, United States
4 Code, is amended by adding at the end the following:

5 “(j) For the purposes of this section, the creditor or
6 party in interest against whom recovery or avoidance is
7 sought is presumed to have carried the burden of proving
8 the nonavoidability of a transfer under subsection (c) un-
9 less the trustee proves that such creditor or such party
10 is an insider or that the debtor has a special relationship
11 with such creditor or such party that consists of—

12 “(1) common ownership of the debtor and such
13 creditor or such party;

14 “(2) common management of the debtor and
15 such creditor or such party consisting of overlapping
16 senior management or directors;

17 “(3) explicit notice from the debtor to such
18 creditor or such party that the filing of a petition is
19 contemplated or imminent before the date of the
20 transfer; or

21 “(4) the use by such creditor or such party of
22 judicial process, in the 90-day period ending on the
23 date of the filing of a petition, against the debtor to
24 collect a debt with respect to which a transfer de-
25 scribed in subsection (b) may have been made.”.

1 (b) AMENDMENT TO TITLE 28 OF THE UNITED
2 STATES CODE.—Section 1409(b) of title 28, United
3 States Code, is amended—

4 (1) by inserting “(1)” after “(b)”, and

5 (2) by adding at the end the following:

6 “(2) Except as provided in subsection (d) of this sec-
7 tion, a trustee in a case under title 11 may commence
8 a proceeding under section 547 of such title only in the
9 district court for the district in which the defendant re-
10 sides.”.

11 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 The amendments made by this Act shall take effect
13 on the date of the enactment of this Act and shall apply
14 only with respect to cases commenced under title 11 of
15 the United States Code after such date.

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